

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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A.A. MEDICAL P.C.,

Plaintiff,

-against-

IRON WORKERS LOCALS 40, 361 & 417
HEALTH FUND,

Defendant.
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Case No.:2:22-cv-01249(ENV)(LGD)

**AFFIDAVIT OF BRIAN J.
SABBAGH IN SUPPORT
OF DEFENDANT'S
MOTION TO DISMISS**

BRIAN J. SABBAGH, being duly sworn deposes and says:

1. I am employed by Iron Workers Locals 40, 361 & 417 Health Fund ("Defendant" or the "Fund") as Fund Administrator. In that capacity, I have personal knowledge of the records and files maintained by Defendant. I make this declaration in support of Defendant's motion to dismiss the Complaint filed by Plaintiff A.A. Medical P.C. ("Plaintiff").
2. The Fund is a multi-employer benefits fund as defined by Section 3 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1002 *et seq.*
3. The participants in the Fund are members of Iron Workers Locals 40, 361 or 417 ("Unions").
4. The Fund is administered by the Board of Trustees, which is comprised of an equal number of the Unions' and Management's Trustees.
5. The Trustees have delegated the application of plan rules to determine eligibility, the calculation of benefits, and the processing of claims to the Fund Administrator and to Fund employees.
6. The Restated Trust Agreement effective February 1, 1976 governs the Fund.
7. The Summary Plan Description ("SPD") details all benefits that are provided by the Plan and how those benefits are processed and paid. In addition, the SPD informs the participants and

beneficiaries of their rights and obligations under the Plan. All participants are provided a copy of the SPD.

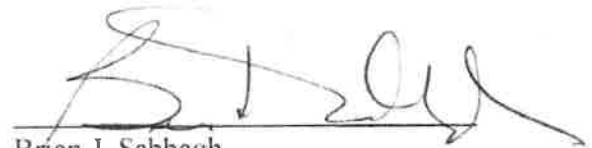
8. For out-of-network claims, the Fund's schedule of allowances is compiled by FAIR Health, a third-party vendor and non-profit organization. According to FAIR Health's website, it collects a database of claims to determine what providers charge and what insurers pay for healthcare, and then further groups the claims by geographic area. Those charges by geographic area are then organized into percentiles. For example, if a provider's price in a certain geographic area is in the 80th percentile for a certain service, that means 80 percent of the fees billed by other providers for the same service were that amount or lower.
9. The Fund, in making its determination of benefits and coverage for this procedure, reviewed the applicable FAIR Health schedule of allowances for out-of-network coverage.
10. Attached hereto as Exhibit "A" is a true and correct copy of the Restated Trust Agreement Effective February 1, 1976. This Plan was in effect when Plaintiff provided medical services to Defendant's participant in June 2021.
11. Attached hereto as Exhibit "B" is a true and correct copy of the Summary Plan Description of the Plan. This is the Summary Plan Description that was in effect when Plaintiff provided medical services to Defendant's participant in June 2021.
12. Attached hereto as Exhibit "C" is a true and correct copy of a report prepared by Med Review, an independent review organization utilized by the Fund, pre-approving procedure 29883 and 29888. The review was performed on June 7, 2021.
13. Attached hereto as Exhibit "D" is a true and correct copy of a report by Med Review, concluding that the 29870 procedure was not medically necessary. The review was performed on August 23, 2021.

14. Attached hereto as Exhibit "E" is a true and correct copy Fund's Claim Report and forms submitted by Plaintiff to the Fund to make a claim for the subject benefits.

15. Attached hereto as Exhibit "F" is a true and correct copy of the applicable FAIR Health schedule of allowances in effect for the location of the procedure in zip code 11787 during June 2021.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 14th, 2024
New York, New York


Brian J. Sabbagh

Sworn to before me this
14th day of January, 2024.


Notary Public